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Docket No.: 21736-00012-US  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Lawrence M. Ausubel

Application No.: 09/397,008

Confirmation No.: 8229

Filed: September 15, 1999

Art Unit: 3628

For: ASCENDING BID AUCTION FOR MULTIPLE  
OBJECTS

Examiner: Poinvil, Frantzy

NOTICE OF APPEAL

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby appeals to the Board of Appeals from the decision of the Patent Examiner dated April 9, 2004, frejecting claims 108-059 of the above-identified patent application. The April 9, 2004 Action was the second rejection in the application.

REMARKS

11/24/2004 SHILLIAN 0000600  
01 FC:2401  
A Restriction Requirement was issued in this application on December 24, 2003.

Applicant believed the Restriction Requirement was improper and responded with an election and traverse of the Restriction Requirement.

On April 9, 2004, an Office Action was issued following Applicant's response to the Restriction Requirement. Contrary to the requirements of 37 CFR 1.143, this Office Action following the Restriction Requirement did not reconsider the Restriction Requirement and/or make the Restriction Requirement final. Indeed, for all that can be gleaned from the April 9, 2004 Office Action, the only claims mentioned in the Action were those claims elected by the Applicant.

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Applicant contacted the Examiner shortly after the Action was issued and pointed out the defect in the Action. The Examiner, at that time, indicated that he would be issuing a new Office Action. On several other occasions, an Office Action was promised. On September 20, the Examiner indicated that an Action had actually been written (by August 20) but for some reason had not yet been mailed.

Accordingly, Applicant fully expects an Office Action to be issued obviating the need for Applicant to respond to the Action of April 9, 2004. However, this Notice of Appeal is being filed merely to insure that the Application does not become abandoned for failure to respond to that Action.

Please charge our Deposit Account No. 22-0185 in the amount of \$330.00 covering the fee set forth in 37 CFR 41.20(b)(1). The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 22-0185, under Order No. 21736-00012-US. A duplicate copy of this paper is enclosed.

Dated: October 8, 2004

Respectfully submitted,

By Stanley B. Green  
Stanley B. Green

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